

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 05-25-05 Item.
		File Number H00-039
<h1>STAFF REPORT</h1>		Application Type Appeal of Site Development Permit
		Council District 8
		Planning Area Evergreen
		Assessor's Parcel Number(s) 491-04-029
PROJECT DESCRIPTION		Completed by: Mike Enderby
Location: South side of Tully Road 850' easterly of Quimby Road		
Gross Acreage: 5.02	Net Acreage: 5.02	Net Density: N/A
Existing Zoning: IP Industrial Park	Existing Use: Vacant	
Proposed Zoning: No change	Proposed Use: Self storage/boat & RV storage facility	
GENERAL PLAN		Completed by: ME
Land Use/Transportation Diagram Designation Industrial Park		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: ME
North: Reid-Hillview Airport, Mini-storage facility	Development	IP-Industrial Park & A(PD) Planned
East: Vacant, bank		A-Agriculture
South: Commercial (Eastridge Mall)		CG-Commercial General
West: Commercial (Eastridge Mall)		CP-Commercial Pedestrian
ENVIRONMENTAL STATUS		Completed by: ME
<input checked="" type="checkbox"/> Environmental Impact Report found complete 11/14/01 (Resolution 01-213) <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		Completed by: ME
Annexation Title: Amos No.29		Date: 7-29-81
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input checked="" type="checkbox"/> Uphold Director's Decision to Deny Permit	Date: _____ <input type="checkbox"/> _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation
OWNER/DEVELOPER Cindy H. Fan- Lion Square 1816 Tully Road, Suit 202 San Jose, CA 95122	ARCHITECT Yui Hay Lee 330 15 th Street Oakland, CA 94612	CONTACT Gary J. Schoennauer The Schoennauer Company 2066 Clarmar Way, Suite D San Jose, CA 95128

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Reena Mathew

Department of Public Works

See attached memorandum

Other Departments and Agencies

- 1) See report from Derek Farmer, Airport Land Use Commission (ALUC) Staff Coordinator, dated May 9, 2001 and related Summary of Actions, dated May 23, 2001
- 2) Memorandum from CSJ Director of Aviation, dated 1/18/02

GENERAL CORRESPONDENCE

- 1) Letter from California Pilots Association, dated 1/24/02
- 2) Letter of Appeal from Applicant's representative dated 8/29/02
- 3) Supplemental appeal letter from the Applicant representative dated September 16, 2002

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The subject proposal is the consideration of an appeal of the Planning Director's decision to deny a Site Development Permit to allow a 78,492 square-foot, two story mini-storage facility and an outdoor storage yard for boats and recreational vehicles (RVs). The project site is located on the south side of Tully Road directly next to the Eastridge Shopping Mall and across the street from the Reid-Hillview Airport, more specifically the end of the runways for the airport. The site is currently vacant and is generally rectangular in shape, except for a "notch" at the northeast corner on an adjacent property for the World Savings Bank. The subject site is otherwise surrounded by public or private streets on all sides.

Prior to the formal denial of this application by the Director of Planning on August 21, 2002, this project was on file for over two years. Despite the certification of the EIR on November 14, 2001, this application subsequently remained inactive due to lack of progress by the applicant for approximately nine months prior to the scheduled Director's Hearing. This project was originally scheduled for Director's Hearing on February 27, 2002 since it seemed apparent to staff that the applicant was unwilling to modify their project to address previously identified site and architectural design concerns. The day before the scheduled hearing, the applicant requested a 30-day deferral in order to revise the project with a less-intensive project design. The deferral was granted.

Later on March 22, 2002, the applicant indicated an unwillingness to modify the height or bulk of the proposed building for the project. Based on this information, the Director's Hearing was rescheduled to April 10, 2002. Two days prior to the rescheduled hearing, the applicant submitted a revised plan which illustrated a reduction in the size of the proposed storage building from a 3-story, 117,738 square foot building to a 2-story 78,492 square foot building. Although, the project represented an improvement from previous designs in terms of its compatibility with the scale of the surrounding one and two story structures that comprise the Tully Road streetscape, the revised project still failed to comply with ALUC policies (see analysis). It was for this reason that staff proceeded with the hearing process and ultimately recommended to the Director that he deny the subject Site Development Permit. The applicant did not attend the hearing.

The applicant filed an appeal of the Director's decision to deny the subject Site Development Permit on August 29, 2005. The applicant's representative, Erik Schoennauer, provided a letter outlining the reasons for the appeal. The key issue of the appeal relates to the Director of Planning decision deny the proposed project for non-compliance with relevant ALUC safety policies (see attached letter of appeal). The applicant is of the opinion that the proposed project is for a low intensity use, that while perhaps not completely consistent with every literal aspect of the ALUC policies, it *does* meet the general "intent" of the policies. Further, the applicant cites that failure to approve the Site Development Permit as proposed would prohibit any economic viability of the subject property.

Approximately two weeks after the appeal was filed, the applicant/appellant requested that the appeal hearing be deferred until after resolution of the Eastridge expansion plan which, at the time, had recently been filed. Both the subject project and the initial Eastridge expansion plan raised significant concerns related to safety as a result of their proximity to the runways at the Reid-Hillview Airport. The applicant for the Capitol Storage project thought that it might be beneficial to their own interests to allow the Eastridge project to go through the process first in order to flush-out final issues and concerns by the Airport Land Use Commission (ALUC) and the local pilot's association(s).

The Eastridge project was later approved in 2004, but was subsequently involved in airport safety related litigation related to the planting of trees in a limited area of the parking lot. This litigation was recently dismissed in court. In light of the resolution of this matter, the appeal of the subject Site Development Permit was re-activated and noticed for the public hearing by the Planning Commission.

Project Description

The proposed project consists of two key components including a 78,492 two-story mini-storage (self-service) building and a storage yard for boats and RVs. The structure is proposed to occupy the southwest third of the site. The balance of the site is proposed for the storage yard. This storage area will be screened by an eight (8) foot tall concrete wall with 25 feet of landscaping next to the street. Perimeter landscaped areas which vary from 10 to 15 feet are proposed around the internal sides and adjacent to the private internal streets that serve Eastridge Mall. A single access point from the existing internal private street (opposite of Tully Road) is proposed to serve the project.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) was prepared specifically for this project. This EIR was certified for this project by the Planning Commission at their hearing on November 14, 2001. The hearing did not coincide with a hearing on the project.

The EIR addressed a multitude of potential environmental issues such as land use, airport traffic safety, geology, aesthetics, transportation, noise, biological and cultural resources. Although projects of a similar type and scale have typically secured environmental clearance with a Mitigated Negative Declaration (MND), an EIR was prepared for this proposal due to special concerns related to potential safety impacts by constructing a structure and storage yard within the FAA and ALUC safety zones. The EIR concluded that there are no mitigation measures available to the City which would reduce the significant land use compatibility impacts to less than significant level. Therefore, the project would result in the creation of a significant unavoidable impact.

Another key environmental issue is related to the potential impacts to biological resources, specifically related to burrowing owls. The project site is currently used by burrowing owls and nearly the entire site represents potential nesting and foraging habitat. The applicant has proposed to enter into a Mitigation Agreement with the California Department of Fish and Game, however this would not reduce the “local” impacts associated with the loss of habitat to a less than significant level. Therefore, the project would result in the creation of a significant unavoidable impact.

Aside from the two key issues noted above, other potential environmental impacts associated with this project are either less than significant or can be mitigated to less than significant. Given that there are two unavoidable impacts associated with the proposed project, approval of the project would require that the City Council adopt a “statement of overriding considerations”. Procedural issues related to potential approval of this project are discussed in the “Recommendation” section of this report.

It should be noted that the subject application was filed prior to the adoption of the current Zoning Ordinance that concurrently changed the zoning designation from I-Industrial to IP-Industrial Park. Under the current zoning designation of IP-Industrial Park mini-storage facilities, such as proposed, are not allowed. By virtue of the filing date of the subject application, this application was eligible to be evaluated with regard to the development standards of the previous I-Industrial Zoning District which allows such storage facilities.

GENERAL PLAN CONFORMANCE

Upon consideration of the project’s conformance with the General Plan, staff, at the time the subject application was denied, had deemed that the proposal was in conformance with the General Plan Land Use/Transportation Diagram designation of Industrial Park. Upon further analysis, during the preparation of this report, the Director finds that this project, although consistent with the General Plan land use designation of Industrial Park, the overall project is not consistent with other applicable General Plan policies related to safety and urban design.

The determination of conformance to the General Plan does not solely focus on conformance with the General Plan land use designation. The General Plan also includes a multitude of other policies related to safety considerations as well as urban design which can be of equal or more importance or significance. The relevance or importance of these policies must be given the appropriate consideration in light of public safety. As further described in the “Analysis” section of this report, the entire site is located within the Airport Land Use Commission (ALUC) South Safety Area I. This is an area whereby structures should not be allowed. Parking areas, however, are deemed to be an appropriate use within such areas.

The General Plan Services and Facilities Policies with respect to aviation recommend that the City should take into consideration the safety areas identified in the ALUC policies. Further, the City should foster compatible land uses in the vicinity of airports and development should avoid potential hazards to air navigation. The ALUC policies, as they relate to development within the subject safety zone, deem a storage lot, as opposed to a structure, a relatively more appropriate alternative land use to better protect public safety and minimize potential hazards. However, this project does also include a building that would be located within the safety area as defined by the ALUC. Therefore, for this key reason, it is the opinion of Staff that the project falls short of substantial conformance to the General Plan.

This proposal is generally consistent with applicable urban design policies noted in the General Plan as related to the implementation of architectural and site design controls on all types of development to ensure the proper transition between areas with different land uses. This can be substantially achieved by adherence to the City's Industrial Design Guidelines.

ANALYSIS

As previously indicated, the project applicant's primary concern is related to the Director's strict interpretation of the project's non-compliance with ALUC safety policies which was the fundamental basis for the denial of the subject Site Development Permit. The applicant/appellant is of the opinion that the proposed project is for a low intensity use, that while perhaps not completely consistent with every literal aspect of the ALUC policies, it *does* meet the general "intent" of the policies. Further, the applicant cites that failure to approve the Site Development Permit as proposed would prohibit any economic viability of the subject property.

The site is located in the final approach path to Runways 31-L and 31-R at Reid-Hillview Airport. The analysis section of this report focused on issues related to the two key airport approach safety zones that overlay the subject property including: 1) South Safety Area I for Reid-Hillview Airport as defined by the Santa Clara County Airport Land Use Commission (ALUC), and 2) Federal Aviation Administration's (FAA) Object Free Area.

ALUC South Safety Area I

The entire site lies within the boundary of South Safety Area I for Reid-Hillview Airport as defined by the Santa Clara County Airport Land Use Commission (ALUC). The ALUC policy related to South Safety Area I states that "The Airport Land Use Commission will not consider the construction of any new buildings in Area I. Parking lots, preferably covered, are permissible uses in this zone." This policy recommends that structures, such as that being proposed, not be located within this safety area.

The ALUC held its first public hearing on September 27, 2000 for the initial submittal, a storage facility building which spanned across most of the site. The Commission followed the recommendations of the ALUC staff report dated September 11, 2000 and found that the proposal was not in conformance with ALUC land use and safety policies as defined in the "Land Use Master Plan for Areas Surrounding Santa Clara County Airports" and voted unanimously against the project.

Subsequently, upon review of a revised proposal which shifted the building toward the western third of the site which is substantially consistent with the current site design proposal, the ALUC staff prepared another report, dated May 9, 2001, which stated that "The proposed parking yard would be in conformance to the policy for South Safety Area I". The report further indicates that the proposed building is not in compliance with the policy. The Commission followed the recommendation of the ALUC staff report and found that the revised project was also not in conformance with ALUC land use and safety policies as defined in the Master Plan and subsequently voted unanimously against this revised proposal as well.

The City Airport Commission held a public meeting on January 14, 2002 to discuss the proposed project and also unanimously recommend that the Director of Planning deny the subject Site Development Permit. The City of San José Airport Department, in a memo from the Director of Aviation dated January 18, 2002, restated

their opposition to the project in its revised form. The City of San José Airport Department addressed their initial objections to the project in a memorandum dated May 8, 2001.

(FAA) Object Free Area

The easterly half of the site area is located within the Federal Aviation Administration's (FAA) Object Free Area. The proposed project proposes an open parking area for boat and recreational vehicle parking in the FAA Object Free Zone. An 8-foot tall masonry wall is proposed within this area to screen the open storage area. This project is deemed to be in partial conformance to this policy with the possible exception of the screen wall around the perimeter of the property.

Conclusion

The ALUC staff has indicated that they are considering amending their policies pertaining to adjacent development in the safety areas. To date, this has not yet occurred or been approved. Further, it is not possible to predict whether such amended policies might be more or less lenient with respect to development limitations on the subject site.

The adjacent Eastridge Mall expansion/remodel project which was approved last year and is also located within various ALUC safety zones. The project was modified significantly since its original submittal to shift the mass of the proposed structure to areas outside the key safety zones of concern. As a result, the project was deemed not to have significant unavoidable environmental impacts and was therefore not required to prepare an EIR and have the City Council adopt a statement of overriding considerations in order to be approved the Planning Commission.

While the proposed project is clearly constrained to a greater level than other properties of a similar size and configuration located away from the airport, this proposed site is not without development potential. As previously indicated, an outdoor storage yard for boats and RVs could be deemed in compliance with the ALUC policy, however an on-site office might be problematic. The monthly cost of an outdoor rental space in San Jose for such vehicles typically ranged from about \$100. to \$125. per month. It should be noted that the storage yard is currently designed such that it would function like a parking lot for a commercial or industrial park use and would not be conducive to storage of boats and over-sized recreational vehicles.

As previously noted, upon the adoption of the current Zoning Ordinance in 2001, the zoning regulations for the I-Industrial zoning district were replaced with those of the new IP-Industrial Park zoning district. Under the current zoning designation of IP-Industrial Park mini-storage facilities, such as proposed, are not allowed. By virtue of the filing date of the subject application, this application was eligible to be evaluated with regard to the development standards of the previous I-Industrial Zoning District, which allows such storage facilities. In the event that the Planning Commission upholds the Director's decision to deny the subject Site Development Permit, the applicant would need to rezone the property prior to being eligible for consideration of approval of any subsequent similar Site Development Permit regardless of the level to which the proposal or land use is reduced in intensity. If such application for rezoning were to be submitted, staff would review it relative to the applicable General Plan and other City policies.

Based on the lack of foreseeable changes to the ALUC policies in the immediate future that might make a storage facility compliant, and based on the amount of plan revisions already reviewed in the context of this single application, the Planning Director deemed denial of the subject Site Development Permit appropriate.

If the Planning Commission decides that they are inclined to approve the subject project “as is” or even a significantly modified version of the proposal, an approval can only be granted subsequent to a decision by the City Council to adopt a “statement of overriding considerations” with respect to ALUC safety policies and biological impacts as described in the “Environmental Review” section of this report. Such a “statement of overriding considerations” has not yet been made. Therefore, approval of a project by the Planning Commission would require a continuance of the public hearing proceedings in order to allow staff to coordinate the appropriate City Council consideration.

Additionally, if the Commission should decide to approve the subject project, Staff recommends that a condition be placed in the permit to require additional architectural review and modifications in accordance with findings #1.a and 1.b (page 5) as noted in the Director’s Site Development Permit Denial, dated August 21, 2002 (see attached).

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 1000 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission deny the subject appeal and uphold the Director’s decision to deny the subject Site Development Permit and include the following findings below in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is 5.02 gross acres in area.
2. The site is currently undeveloped.
3. The project site is located in the IP-Industrial Park Zoning District.
4. The project site has a General Plan Land Use Transportation Diagram designation of Industrial Park.
5. The General Plan includes policies that recommend that the City should take into consideration the safety areas identified in the Airport Land Use Commission (ALUC) policies.
6. The subject application was filed on May 30, 2000. A 30-day letter was sent to the applicant which addressed Burrowing Owl, traffic and architectural issues. Attached to the letter were initial comments from the City of San José Department of Public Works, Fire Department, Environmental Services Department, Police Department and the Santa Clara County Airport Land Use Commission (ALUC).

7. An Administrative Draft Environmental Impact Report (ADEIR) for this project was circulated from April 27, 2001 to May 18, 2001. A Draft EIR (DEIR) was circulated between August 8, 2001 and September 17, 2001, with the First Amendment to the DEIR circulated on November 1, 2001. An Environmental Impact Report (EIR) was certified for this project on November 14, 2001.
8. The proposal is an application for a Site Development Permit to allow construction of a two-story, 78,492 square foot mini-storage facility. The majority of the remaining site area is proposed for open storage of boats and recreational vehicles.
9. The site is located in the final approach path to Runways 31-L and 31-R at Reid-Hillview Airport.
10. The easterly half of the site area is also located within the Federal Aviation Administration's (FAA) Object Free Area.
11. The proposed project proposes an open parking area for boat and recreational vehicle parking in the FAA Object Free Zone. An 8-foot tall masonry wall is proposed within this area to screen the open storage area.
12. The entire site lies within the boundary of South Safety Area I for Reid-Hillview Airport as defined by the Santa Clara County Airport Land Use Commission (ALUC).
13. The ALUC policy related to South Safety Area I, as noted above, states that "The Airport Land Use Commission will not consider the construction of any new buildings in Area I. Parking lots, preferably covered, are permissible uses in this zone." This policy recommends that structures, such as that being proposed, not be located within this safety area.
14. The ALUC held a public hearing on September 27, 2000 for the initial submittal, a storage facility building which spanned most of the site. The Commission followed the recommendations of the ALUC staff report dated September 11, 2000 and found that the proposal was not in conformance with ALUC land use and safety policies as defined in the "Land Use Master Plan for Areas Surrounding Santa Clara County Airports" and voted unanimously against the project.
15. Another public hearing was held on May 23, 2001 by the ALUC based on a revised proposal. The Commission followed the recommendation of the ALUC staff report dated May 9, 2001 and found that the revised proposal was also not in conformance with ALUC land use and safety policies as defined in the "Land Use Master Plan for Areas Surrounding Santa Clara County Airports" and voted unanimously against the project.
16. The City Airport Commission held a public meeting on January 14, 2002 to discuss the proposed project and unanimously recommend that the Director of Planning deny the subject Site Development Permit.
17. The City of San José Airport Department, in a memo from the Director of Aviation dated January 18, 2002, restated their opposition to the project in its revised form. The City of San José Airport Department addressed their initial objections to the project in a memo dated May 8, 2001.
18. The subject application was filed prior to the adoption of the current Zoning Ordinance that concurrently changed the zoning designation from I-Industrial to IP-Industrial Park.

19. Under the current zoning designation of IP-Industrial Park mini-storage facilities, such as proposed, are not allowed.
20. By virtue of the filing date of the subject application, this application was eligible to be evaluated with regard to the development standards of the previous I-Industrial Zoning District, which allows such storage facilities.
21. Existing non-residential development near the front setback line along Tully Road is typified by low rise, one or two-story buildings.
22. After a period of approximately nine (9) months with no development activity or progress by the applicant on the project design issues, the application was scheduled for Director's Hearing on February 27, 2002. On February 26, 2002, the applicant requested a 30-day deferral of the originally scheduled Director's Hearing of February 27, 2002 in order to revise the project with a less-intensive project design. The deferral was granted.
23. On March 22, 2002, the applicant indicated an unwillingness to modify the height or bulk of the proposed building element for the project.
24. As of March 27, 2002, no revised project plans had been submitted to the Planning Division.
25. On March 27, 2002 the Director's Hearing was deferred to April 10, 2002 to allow staff an opportunity to prepare for a Director's Hearing with a project recommendation of "denial".
26. A revised plan was submitted to the Planning, Building & Code Enforcement Department on April 8, 2002 which reduced the size of the proposed storage building from a 3-story, 117,738 square foot building to a 2-story 78,492 square foot building.
27. On April 10, 2002 the Director's Hearing was held. Staff recommended "denial" of the project. The applicant did not attend the hearing.

Finally, based upon the above-stated findings, the Planning Commission concludes the following:
finds that:

1. The project is not consistent with the Airport Land Use Commission's (ALUC) airport safety policy related to South Safety Area .
2. The project is not consistent with the FAA policy to maintain an "Object Free Area".
3. The project is not consistent with the General Plan.
4. The project complies with the applicable provisions of the Zoning Ordinance, Title 20 of the Municipal Code in effect at the time of project submittal. Although the present zoning of IP-Industrial Park does not allow storage use, at the time of submittal the project site had a zoning designation of I-Industrial, which allowed storage as a primary use.

5. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
6. The proposed project generally conforms to the City's *Industrial Design Guidelines*. The proposed two-story structure is similar in character to other buildings located in similar proximity to Tully Road.
7. The storage yard is currently designed such that it would function like a parking lot for a commercial or industrial park use and would not be conducive to storage of boats and recreational vehicles.

Finally, based upon the above-stated findings, the Planning Commission finds that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are not mutually compatible and aesthetically harmonious, in that:
 - a. The City's *Industrial Design Guidelines* recommend that new projects avoid abrupt setbacks and massing and that long uninterrupted facades be avoided by adding windows and openings, recessed portals, wall off-sets, varying color and texture, building articulation and architectural details. Self-serve storage buildings visible from street should be architecturally treated to break up the box-like appearance.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are not compatible with and aesthetically harmonious with adjacent development or the character of the neighborhood, in that:
 - a. The proposed project does not conform to the City's *Industrial Design Guidelines*, however, the project could be modified to be compliant. The proposed two-story structure is similar in scale with other buildings located in similar proximity to Tully Road.
3. The environmental impacts of the project have been addressed in an Environmental Impact Report (EIR) which was certified for this project on November 14, 2001. The project would have a significant unavoidable impact on Burrowing Owl nesting and foraging habitat in that the project would result in the loss of habitat. The project would also have a significant unavoidable impact on land use compatibility in that the proposed project is located within the Airport Land Use Commission's Safety Zone for the Reid-Hillview Airport.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. Landscaping and perimeter walls are being added to screen what is proposed to be an outdoor storage area for boats and recreational vehicles.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. The proposed use would not result in the generation of peak hour trips that would result in significant traffic impacts.
 - b. Pedestrian access and parking proposed are generally adequate.

6. This proposed project is not consistent with the intent of key policies noted in the General Plan.
 - a. The project proposes to place a two-story structure within ALUC South Safety Area I, an area where such structures should be avoided.

Finally, based upon the above stated facts and findings, the Planning Commission **denies** the proposed application.

DENIED this ____ day of May, 2005.